

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Deborah Stewart,
Plaintiff

vs

The Proctor & Gamble Company, et. al.,
Defendants

Case No. C-1-04-721
Case No. C-1-05-337
Case No. C-1-05-390
Case No. C-1-05-480
(Hogan, M.J.)

ORDER

This matter came before the Court this date for an informal status conference.

Defendants have filed Motions to Consolidate Plaintiff's actions bearing the docket numbers C-1-05cv390 and C-1-05cv480 under the lowest docket number C-1-04-721. (*See* Case No. C-1-05cv390, Doc. 11; Case No. C-1-05cv480, Doc. 8). While the parties have consented to entry of final judgment by the Magistrate Judge pursuant to 28 U.S.C. § 636(c) and S.D. Ohio Civ. R. 72.1 in Case No. C-1-04cv721, the parties have not so consented with respect to cases C-1-05cv390 and C-1-05cv480. In addition, the parties have not consented to entry of final judgment by the Magistrate Judge in case No. C-1-05cv337. Thus, the Court's previous Order consolidating that case with case C-1-04cv721 was improper and is now rescinded. (*See* Case No. C-1-05cv337, Doc. 6).

The decision to consolidate is committed to the discretion of the court. *Cantrell v. GAF Corporation*, 999 F.2d 1007, 1011 (6th Cir. 1993). Courts can order consolidation of cases which share the same questions of law or fact where consolidation would not result in prejudice to any party. However, the court should not order cases consolidated if consolidation would prejudice the interests of any party. *Lewis v. ACB Business Services, Inc.*, 135 F.3d 389, 412 (6th Cir.

1998).

The parties in *Stewart v. The Proctor & Gamble Company*, Case No. C-1-04cv721, have consented to present their case before a magistrate judge, pursuant to 28 U.S.C. §636(c) and S.D. Ohio Civ. R. 72.1. All parties in a civil case must consent before a magistrate can try the case. 28 U.S.C. § 636(c)(1). The parties in cases C-1-05cv337, C-1-05cv390, and C-1-05cv480 have not consented to have these cases tried before a magistrate. Therefore this Court cannot order this case consolidated with case C-1-04cv721. To do so would force the parties in these cases to proceed in front of the magistrate against their will. 28 U.S.C. 636(c)(2)(Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent). However, for purposes of discovery, the Court is not so constrained. As the undersigned has been designated by the district court to hear and determine pretrial matters pertaining to cases C-1-05cv390, and C-1-05cv480, it is within the Court's discretion to consolidate the discovery of these actions under the lowest case number. *See* 28 U.S.C. § 636(b)(1)(A). However, no reference order has been issued with respect to Case No. C-1-05cv337. Therefore, only the cases bearing the docket numbers C-1-05cv390 and C-1-05cv480 shall be consolidated for purposes of discovery under Case No. C-1-04cv721.

Moreover, Defendant seeks an order prohibiting Plaintiff from filing any further complaints relating to the facts of this case without first obtaining leave of court (*See* Doc. 23). This motion is denied as the Court is without authority to enjoin Plaintiff's right to file in state court. However, to the extent Plaintiff attempts to file additional complaints in district court pertaining to the facts of the present consolidated case, Plaintiff is enjoined from doing so without obtaining leave of court. *See Marbley v. Kay*, 238 F.3d 422 (6th Cir. Dec. 8, 2000).

IT IS THEREFORE ORDERED THAT

1. The Court's previous Order consolidating Case No. C-1-05cv337 with Case C-1-04cv721 (Doc. 26) is RESCINDED.
2. The Court's Order administratively closing Case No. C-1-05cv337 (C-1-05cv337, Doc. 8) is VACATED and case C-1-05cv337 is REFERRED to Judge Herman J. Weber for determination.
3. Defendant's Motion to Consolidate (Case No. 05cv390, Doc. 11) is

DENIED.

4. Defendant's Motion to Consolidate (Case No. C-1-05cv480, Doc. 8) is DENIED.
5. Cases C-1-05cv390, and C-1-05cv480 are consolidated with Case No. C-1-04cv721 for purposes of discovery only.
6. Defendant's Motion to (1) Require Pro Se Plaintiff to Comply with Federal Rule of Civil Procedure 15(a); and (2) Enjoin Plaintiff from filing further Lawsuits, Regarding the Facts Here at Issue, Without First obtaining Leave of Court (Doc. 27) be GRANTED in part and DENIED in part consistent with the decision herein. Plaintiff is ENJOINED from filing any further actions in the District Court for the Southern District of Ohio which pertain to the facts of the present consolidated case without first obtaining leave of court.
7. The Calendar Order dated February 17, 2005, is hereby amended, and shall apply to cases C-1-04cv721, C-1-05cv390 and C-1-05cv480, as follows:

Amended Complaint Deadline: **March 31, 2006**

Deadline for disclosure of expert witnesses and submission of expert reports:

Plaintiff identify primary experts: **January 2, 2006**

Plaintiff produce primary reports: **February 1, 2006**

Defendant rebuttal for identifying rebuttal experts: **March 1, 2006**

Defendant rebuttal for producing primary reports: **April 3, 2006**

Parties to exchange witness list and summary: **April 3, 2006**

Discovery deadline: **May 1, 2006 (all discovery shall be completed by this date)**

Dispositive motion deadline: **June 15, 2006**

Joint final pretrial order: **Submitted to the Court 3 days prior to FPTC***

Final pretrial conference: **October 3, 2006 at 9:30 a.m.***

Jury Instructions: **Submitted to the Court 7 days prior to Trial***

Jury Trial: **November 13, 2006***

* These dates pertain only to those cases consolidated under Case No. C-1-04cv721 and consented to entry of final judgment by the Magistrate. Specific Final Pretrial and Trial dates in cases C-1-05cv390 and C-1-05cv480 shall be assigned by the District Court.

SO ORDERED.

Date: 9/1/2005

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge

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